

**Regional Activity to Promote Integration
Through Dialogue and Policy
Implementation (RAPID)**



Task Order 2.2

**End of Assignment Report:
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Introduction

This is the final report of Mr. P.J.B. Steele, a Short Term Expert (STE) under Task Order 2.2., assigned as Rules of Origin Implementation Adviser. The STE's contract terminates at end-October, 2001. The report relates to his work in this area since joining the RAPID project in April, 2001. However, as he was previously engaged on similar work under the SADC Trade Protocol Project, also funded by USAID/RCSA, reference is made to that earlier activity as appropriate.

Background to Rules of Origin work under RAPID

The RAPID predecessor project, the SADC Trade Protocol project, recognised from the very start of that exercise that, as the protocol in its final form would be a free trade agreement and not a Customs Union, an effective Rules of Origin regime would be crucial to the success of the Member States in promoting their objectives of intra-regional trade and economic integration. To be more specific, the team saw that the protocol's lack of a Common External Tariff made it necessary for it to incorporate a Rules of Origin mechanism to inhibit Third Country goods from benefiting from its preferential tariff access provisions that were supposed to be confined to goods originating within the region.

Accordingly, one of the chief objectives of the project in supporting the protocol negotiating process, the TNF, was to try and ensure that the Rules of Origin regime finally adopted would be effective in its primary purpose of encouraging intra-regional trade in manufactured goods, but not be unduly restrictive and over-complex and thus likely to discourage the achievement of the main objectives of the protocol cited above. The SADC Trade Protocol project largely failed in this objective and the product-specific system finally agreed by the TNF was considered by the project team and by many disinterested observers as, indeed, unduly restrictive. It would not merely exclude the import of manufactures from Third Country sources, but also inhibit the production of goods manufactured in the region from Third Country components and was, therefore, likely to impede rather than encourage trade and trade-generated economic activity. In addition, its product-specific nature rendered the regime viciously complex and thus likely to be difficult to administer effectively with the potential of imposing great burdens on *bona fide* exporters.

Given this outcome, the SADC Trade Protocol project determined that, in advising on the implementation of the regime, it should seek to ensure that the regulatory systems adopted to this end as far as possible mitigated the likely negative consequences of its inherent characteristics. This objective was taken over by RAPID when the exercise fell under the aegis of that project.

Objectives

The objectives of the STE in formulating RAPID proposals for implementing the SADC Trade Protocol Rules of Origin regime were to ensure that the systems proposed would operate in such a way as to:

1. Give confidence to national Customs authorities within the region that the regime was being effectively administered as intended in all Member States and, consequently, that, in most instances, claims for tariff preferences were being made only in respect of goods that qualified for them; and to
2. Achieve this without imposing such burdens of proof on exporters and producers for export that the development of intra-regional trade would be effectively discouraged. The need to avoid burdensome procedures bearing down on exporters at time of shipment of goods was regarded as a particularly pressing need of any system.

Activities

Organisation

During his assignment to the project from April-October, 2001, the STE worked within the framework of the RAPID Customs Group which was concerned with implementing all Customs aspects of the Amendment Protocol, interfacing in this regard with the SADC Heads of Customs group.

The implementation of Rules of Origin regimes is not inherently a Customs issue. Customs are usually agencies of Ministries of Finance and, as such, are basically concerned with the protection and collection of national revenues arising from duties on import trade and excise taxes. The enforcement of Rules of Origin, on the other hand, is undertaken by exporting countries to give confidence to their trading partners that only originating goods will be permitted to seek to benefit under the preferential access provisions of trade agreements. For this reason the process of ensuring that export goods conform to the requirements of the Rules of Origin regime often falls under the aegis of Ministries of Trade rather than Finance while Customs tends to be a consumer of certificates (issued in exporting countries) as primary documents for deciding whether to give preferential treatment rather than a producer.

However, in Africa, there is a tradition of Customs handling the certificate issuing function and it was assumed (although not prescribed) in the SADC Trade Protocol that they would undertake this role in the SADC context as well. In addition, as Customs departments have to be satisfied with the certificates they receive, it seemed obvious that the procedures formulated by RAPID for implementing the Rules of Origin regime should take its requirements into account. Finally, the SADC Heads of Customs appeared to offer the most effective mechanism for implementing the regime and the STE worked closely with his Customs colleagues in establishing relations with the Heads as a group and determining how they might interact with RAPID. In this context it seemed appropriate that the STE should function as a member of the Customs Group while pursuing his discrete objectives.

Approach

In formulating his proposals the STE was guided by the relevant provisions of Annex I of the Amendment Protocol insofar as this was compatible with the over riding RAPID objectives regarding Rules of Origin implementation indicated above. This required that responsibility for ensuring that exports conformed to the Rules of Origin should fall upon the Member States and should be based on the issue of documentary Certificates of Origin. This is the usual way in which Rules of Origin regimes are implemented in international agreements and RAPID decided to proceed on that basis. Other means of implementation which did away with the need to issue hardcopy Certificates of Origin were considered by the STE and his Customs colleagues and may be brought before the relevant SADC agencies for their consideration at a suitable time. However, the Group decided that, for immediate implementation purposes, there was merit in not proposing too radical a departure from the tried and the familiar.

The objective of ensuring that importing Member States had confidence in process by which their trading partners issued Certificates of Origin seemed to the STE most likely to be served by basing the various national systems on common administrative principles that would, in turn, be reflected in common regulatory procedures formulated for the guidance of those agencies mandated to administer the regime in each country. This, indeed, seemed to be the view of those who formulated the Rules of Origin regime as set out in Annex I of the Amendment Protocol which stipulated in Rule 12 that the CMT should make regulations to facilitate the implementation of the regime – the inference being that those regulations would apply to all Member States alike. The approach to his work adopted by the STE, therefore, was to:

1. Formulate and secure acceptance by the CMT of Common Administrative Principles based on regional and international Best Practice that would be applied in all Member States;
2. On the basis of these Common Administrative Principles, develop common procedures for the guidance of officials responsible for the administration of the Rules of Origin regime in each SADC Member State and also exporters seeking to benefit from the protocol preferential provisions. Again it was necessary to secure acceptance of these common procedures first by the Heads of Customs and then by the CMT.

In addition, the STE decided to recommend changes to the wording of the Amendment Protocol itself. This was, firstly, to address the ambiguities he perceived in the agreed text and, secondly, to bring it into line with the common understanding of how the Rules of Origin regime should be administered – in particular taking into account the views of the Heads of Customs who would ultimately be responsible for its administration (see above). In undertaking this task, the STE relied on the guidelines established in Annex K of the WCO Kyoto Convention wherever these seemed appropriate.

Proposals

The STE developed a number of discrete proposals under the above heads which were submitted to the Heads of Customs in the form of three Occasional Papers.

Occasional Paper I set out the Common Administrative Principles. These were supplemented by proposals in **Occasional Paper II** for a system for the electronic validation of Certificates of Origin.

In fact these latter proposals were formulated well before the Common Administrative Principles to address concerns expressed by Member States in the protocol negotiation process (the TNF) that such certificates might be forged as a means of securing originating status for goods that did not qualify for preferential treatment. A paper was first presented by the STE at the Pretoria TNF in December, 1999, and at their meeting in Maseru, Lesotho, in April, 2000, the CMT said the proposals should be examined further. To this end the system proposed in the SADC Trade Protocol project paper was developed with the technical assistance of CSS Ltd. However, the TNF process subsequently failed to address this issue until the Heads of Customs¹ turned their attention to implementing the Customs aspects of the protocol in 2001. At their meeting in Livingstone, Zambia, in August, 2001, the HoC requested that a demonstration of the electronic validation system (now known as the Electronic Certificate Information System (ELCIS)) be prepared for their next meeting in Durban, RSA, in November of that year.

The proposed amendments to the Amendment Protocol were set out in **Occasional Paper III**. This was submitted to the Working Group on Rules of Origin Implementation (CAWG-I) with a view to recommendations being made to the HoC at the Durban meeting.

Copies of all three Occasional Papers circulated with this report.

Progress in implementing the Rules of Origin regime

Under the procedures agreed with the HoC, Occasional Papers I and II were submitted to them at their meeting in Livingstone in August, 2001. The Heads then decided that the proposals were to be considered by the Customs Advisory Working Group on Rules of Origin Implementation (CAWG-I) and their conclusions and recommendations made known to the Heads at the Durban meeting. In addition, as already noted, the HoC asked for a demonstration of the working of ELCIS. This was prepared by the STE in concert with CSS Ltd. and took the form of a wider demonstration of the working of ELCIS in the context of certification procedures developed on the basis of the Common Administrative Principles as such procedures might apply to an imaginary shipment between Mauritius and the RSA. In this way it was hoped that the CAWG might get a clearer idea of how RAPID considered the certification process should operate and thus be better placed to make informed recommendations to the HoC.

¹ By this time it had been agreed that the Heads of Customs should act as the Sub-Committee on Customs Cooperation in the TNF process and report directly to the CMT.

The outcome of the CAWG meeting is reported in detail in the STE's trip report of this day's date.

What is to be done?

The next steps in the implementation process are to secure the agreement of the HoC to the adoption of the Common Administrative Principles as a basis for regulations to be agreed by the CMT under Rule 12 of Annex I and of the intended manual of regulatory procedures based upon those regulations. The ELCIS system would form an integral part of this structure. As noted in his trip report, the STE has begun work on a manual of procedures and he attaches the (incomplete) draft which may be of service to RAPID in assisting the CAWG in developing such a document.

If they are accepted by the HoC these various elements will next have to be agreed by the CMT. Assuming that the proposals survive these stages they will then need to be implemented by the Member States. This will require that countries that are already implementing the Rules of Origin regime should be persuaded to bring their systems into essential harmony with procedures recommended under Rule 12. Other countries will probably need assistance in the implementation process. The technical implications of adopting ELCIS and the cost of this will also need to be considered. At some stage RAPID will need to discuss with the RCSA the role of USAID technical assistance in developing these elements of the implementation process.